

EXHIBIT F

PART 3

1 objection.

2 THE WITNESS: Yes, with my understanding of
3 what those words mean, yes.

4 BY MR. HARTMAN:

5 Q. This is a substantial addition to the
6 press. Did you indicate that the two palm -- two
7 hand controls and movable pedestal is a substantial
8 addition to the press?

9 A. Yes.

10 Q. What do you mean by it is a substantial
11 addition to the press?

12 A. Well, you know what the two hand controls
13 look like. They probably weigh 50 pounds or more,
14 and they are big. And they weren't there when the
15 press was sold and someone came along, and
16 I believe it was Cory, they had that installed as a
17 possible feature for this press. And I think it is
18 a substantial change in the way the press would
19 operate, perform, appear, function, all of those
20 types of things.

21 Q. Would it affect the way the foot control
22 would work when utilized with the press brake?

23 MR. ROBINSON: I will object to the form of the
24 question.

1 THE WITNESS: If you turn the key to the two
2 hand controls, the foot control wouldn't work at
3 all.

4 BY MR. HARTMAN:

5 Q. If you turn the key to foot control, would
6 the foot control operate as it had originally been
7 intended to in conjunction with the press brake?

8 MR. ROBINSON: Objection to the form.

9 THE WITNESS: You know, I have never seen that
10 demonstrated that it would. I have assumed that it
11 probably would but factually I don't think anyone
12 took the foot control that was sent by Heim and
13 used it with this two hand control to see if
14 turning the switch actually did that. I assume it
15 probably did but I haven't seen it done by anyone.

16 BY MR. HARTMAN:

17 Q. So you have no information with regard to
18 that?

19 A. I don't think anyone does, that's correct.

20 Q. You have no information relating to that?

21 A. I haven't seen anyone have any information
22 in that regard.

23 Q. I understand about your statement about
24 anyone. I am asking you personally --

1 A. Including myself.

2 Q. So you have no information as it relates
3 to that issue?

4 A. I have not seen it demonstrated. I don't
5 have demonstrated information.

6 Q. Do you have an opinion as to whether or
7 not the addition of a two hand control and a
8 movable pedestal is a good addition or a bad
9 addition?

10 MR. ROBINSON: Object to the form of the
11 question.

12 THE WITNESS: That depends.

13 BY MR. HARTMAN:

14 Q. Please tell me why, what it depends on.

15 A. Well, these two hand controls are supposed
16 to have control reliability. If it doesn't have
17 control reliability, it probably isn't a good thing
18 to do. They are supposed to be anti-repeat,
19 anti-tie down. If it doesn't perform that way, it
20 is probably not a good idea. They are supposed to
21 be spaced in such a way and configured in such a
22 way that it is difficult for someone to cheat them.

23 It is consideration about where you should
24 place two hand controls because of the possibility

1 of causing the machine to start to cycle and then
2 moving your body part into an accident area.

3 So you can't say that the addition of two
4 hand controls is always good or always bad. There
5 are a lot of other considerations.

6 BY MR. HARTMAN:

7 Q. Did the addition of the two hand control
8 on the Heim press brake that Ms. Lindquist was hurt
9 on contribute to her accident?

10 MR. ROBINSON: Object to the form of the
11 question.

12 THE WITNESS: I think the way it may have
13 contributed to her accident is that the machine
14 probably should have been cycled for the part she
15 was making probably using the two hand controls and
16 using point-of-operation safeguarding.

17 But it itself is separate how it might interact
18 with the foot control, it itself probably didn't
19 change. I am assuming it didn't change the
20 functioning of the foot control.

21 BY MR. HARTMAN:

22 Q. Do you have any information that leads you
23 to believe that the placement of the two hand
24 control and movable pedestal for use on the Heim

1 press brake that Ms. Lindquist was injured
2 contributed to her accident?

3 MR. ROBINSON: Objection. You just asked it.

4 He just gave you an answer. You apparently didn't
5 like his answer.

6 THE WITNESS: She wasn't using the two hand
7 control at the time of the accident. I think had
8 she been using it and using it properly and had it
9 been configured properly, this accident most likely
10 would not have happened. But she wasn't using it
11 at the time of the accident. It is a substantial
12 change to the piece of equipment. I think it could
13 have saved her these injuries but it obviously was
14 not in use.

15 BY MR. HARTMAN:

16 Q. It didn't cause her injuries, though,
17 correct?

18 MR. ROBINSON: Objection. You just asked it
19 again because you don't like his answer.

20 THE WITNESS: I think the lack of using it
21 caused or contributed to her accident.

22 BY MR. HARTMAN:

23 Q. The next paragraph you indicate, and
24 I quote, there are few photographs of a foot

1 control reportedly in use at the time of the
2 accident. The photographs show some
3 characteristics that are inconsistent with the
4 original foot control and its exact manufacturer
5 cannot be determined based on the photographs.

6 Did I accurately read your report?

7 A. Yes.

8 Q. What characteristics were in the
9 photographs that indicate to you that the foot
10 control involved in this accident was not the
11 original foot control at the time of the
12 manufacture of this machine?

13 A. I think the primary thing is the fact that
14 the pedal, that the Linemaster foot controls, every
15 part of the housing and components are kind of a
16 bright orange; and I believe the photographs show
17 that the pedal is darkened. And that makes me
18 wonder if that control might not have been a hybrid
19 or modified or made by someone else.

20 Q. Would you expect a foot control that is
21 used for 30-plus years to become darkened inside of
22 the shield?

23 MR. ROBINSON: Object to the form.

24 THE WITNESS: Well, obviously the foot control

1 wasn't used for 30-some years because the foot
2 control that was there at the time of the accident
3 is different than the foot control that was sold by
4 Heim.

5 But certainly I would expect the foot control
6 might change its color to some extent. I don't
7 know that I would even expect, depending on the
8 production, that a foot control pedal would
9 necessarily survive for 30 years.

10 I believe the testimony of one of the people
11 for the maintenance for Cory said it looked new to
12 him and he wouldn't be surprised if that was the
13 original equipment.

14 But that's what I was referring to in this
15 sentence was the fact that the pedal itself appears
16 to be dark, and I think Linemaster did not sell
17 them that way.

18 BY MR. HARTMAN:

19 Q. If it was a Linemaster, is it your
20 testimony you would expect to see orange on the
21 inside?

22 A. That's correct.

23 Q. The next paragraph you indicate, the
24 self-inflicted injury appears to have occurred when

1 the plaintiff pressed her foot downward on the foot
2 control while still having her hand within the dye
3 on the press brake; am I correct?

4 A. Yes.

5 Q. When you talk about self-inflicted, do you
6 mean because she inadvertently activated the press,
7 is that how she self-inflicted these injuries?

8 A. She -- her movement, her body movement,
9 her actions are what initiated -- and her -- having
10 her hands in the point of operation are what caused
11 this injury.

12 It wasn't as if there was an electrical
13 short or there was some lightning or some other
14 person came along and threw a switch. It was
15 through her own actions with the foot control and
16 her own actions with her hands.

17 Q. And it is your understanding that the
18 accident happened because Ms. Lindquist
19 inadvertently activated the foot control causing
20 the press brake to cycle; am I correct?

21 A. It is my understanding that her foot
22 pressed down on the foot control and that caused
23 the press brake to cycle and that's -- and her
24 hands were at the point of operation and that's why

1 they were injured, that's correct.

2 Q. Do you believe it was an inadvertent or
3 advertent pressing down on the foot control?

4 A. You know, that's an interesting question.

5 I don't believe it was inadvertent in that she had
6 a muscle twitch necessarily that caused it.

7 I believe that it is probably that she is leaving
8 her foot on the foot control and that she is
9 familiar with cycling the machine, and she cycles
10 it probably by some mental signal going through her
11 nervous system causing her foot to move.

12 But we will never know that because no one
13 took a photograph or documented it at the time or
14 there is no way to properly document that. So
15 I guess that's my opinion about that.

16 Q. Do you have any evidence that she intended
17 to operate the foot control while her hands were in
18 the dye?

19 A. No, I don't think she was intending on
20 maiming herself or amputating fingers.

21 Q. What evidence do you have that
22 Ms. Lindquist left her foot in the foot control at
23 the time of her accident immediately prior to the
24 operation of the foot control?

1 A. Most of the evidence is based on human
2 factors kinds of things, literature, probabilities,
3 functionality of this kind of equipment and the
4 task she is doing. I mean there have been two
5 general situations described here, either she is
6 riding the pedal and her foot goes down at an
7 inappropriate time when her hands are there or
8 somehow her foot just magically slides into this
9 place, takes a whole bunch of turns and maneuvers
10 and does it at an inappropriate time.

11 I think it is more likely than not that
12 her foot was in there. And if you look at her own
13 testimony, even though she says she doesn't think
14 her foot was there, there is many times in her
15 testimony or there is a time in her testimony when
16 she is not absolutely certain as to what went on.

17 People, when they are using this kind of
18 equipment or controls of this type, become
19 habituated to doing certain things and they don't
20 make overt cognitive records in their mind of
21 what's going on.

22 It is like when you drive into the office
23 or into work, if you take the same route over and
24 over again, you habitualize yourself to where there

1 are stop signs, to where there might be children,
2 to where there might be a problem in the road. And
3 if they suddenly put up a new stoplight or a new
4 traffic control device, you might be startled by it
5 or actually violate that new control because you
6 have become habituated to it.

7 Foot controls people become habituated to.
8 It is talked about in the literature. It is talked
9 about in the literature that the most common kind
10 of accident where people get hand amputations or
11 hand injuries is because they have been riding the
12 pedal.

13 And if you look at this from a human
14 factors standpoint that there is an incentive to do
15 that, this machine can run fairly fast and she is
16 making a significant number of parts per day. This
17 isn't a one or twosie kind of operation. If you
18 look at the human factors associated with an
19 accidental slide in, it is so complicated and
20 contorted, it seems very unlikely that that's what
21 happened.

22 BY MR. HARTMAN:

23 Q. You talk about literature that you rely
24 upon for habituated, to show that. Can you tell me
101

1 what literature you are -- the articles or journals
2 that you are referring to?

3 A. I didn't specifically bring those with me
4 but I think most of the articles I mentioned that
5 talked about the general safety philosophy that
6 were in my report, talk about the concept of people
7 developing workplace habits.

8 Q. What article is that, sir? I am sorry.
9 I have read your report many times. I don't know
10 what article you are talking about.

11 A. Okay. I didn't bring any articles with
12 me, and I didn't in my report here cite the
13 well-known --

14 Q. What page are you on?

15 A. I am not done with what I was answering.
16 -- the well-known concept of people being
17 habituated to certain behaviors but in articles and
18 in books like those on page 14 in the last
19 paragraph, it starts out with the word indeed,
20 Safety Management and Occupational Safety and
21 Health and a couple of the books I had in taking
22 human factors courses -- I can't get their name
23 right offhand, but they talk about -- and it is
24 well-known in the literature and you know it from

1 your own life experiences that people have certain
2 habits.

3 I have a habit of drinking a lot of water
4 when I am talking. Some people play with pens when
5 they are doing things. People who use a certain
6 control repeatedly over and over again become
7 habituated to it.

8 In fact I think in one of Professor
9 Barnett's publications he talks about in cars and
10 automobiles people becoming habituated. They don't
11 have to look to see where the brake pedal is, where
12 the clutch is, where the gas pedal is. You know by
13 habit what pedal to push on and where it is at. We
14 develop these habits.

15 She would have been habituated to leaving
16 her foot on this kind of control. She would have
17 also been habituated to the fact to know that there
18 is a foot control somewhere around that foot, that
19 it is not way over here, that it is not behind her,
20 that it is not eight inches off the floor.

21 She has placed her foot so many times in
22 that foot control that she has to know that it is
23 there. She has to know how it functions; and she
24 has to know if she leaves her foot in there, it

1 will save her having to move her foot back and
2 forth and back and forth. And this machine can
3 cycle as fast as 60 times or 30 times a minute so
4 there could be some production mode where she would
5 be doing this that often. So she has been
6 habituated to that. And I think that's part of
7 this riding the foot pedal and why it is
8 accidentally activated.

9 And that one article by the fellow from
10 NIOSH talks about that when there is an especially
11 fairly short cycle time -- and it is like 17 cycles
12 per minute I think is what it is -- that that is
13 where there starts to be a correlation between
14 people accidentally stepping on the control and
15 getting some kind of an injury.

16 So that's -- they don't use the word
17 habituation but that's what they are talking about
18 in that article. And I think that was one of the
19 articles -- the article that we made as an exhibit
20 early on in my deposition.

21 Q. What is the National Safety Council?

22 A. What is it?

23 Q. Yes.

24 A. My understanding, it is a not-for-profit

1 organization. It is headquartered in one of the
2 western suburbs of Chicago. It has been around
3 from I think the '20s or '30s whose goal it is to
4 promote safety whether it be in the workplace,
5 consumer safety, personal safety, those kinds of
6 things.

7 They author many documents, publications,
8 books on safety. They are the organization that
9 provides the framework for a variety of groups that
10 are outside of the National Safety Council to come
11 together and either write safety documents, give
12 safety seminars or to sit on safety-related
13 standards committees.

14 So, for example, I am not employed by the
15 National Safety Council but they have a Power Press
16 and Forging and Metal Fabrication Committee that
17 includes press brakes. And I have been a member of
18 that committee for 20-some years and vice-chairman
19 and chairman and a presenter at many of their
20 conferences having to do with a variety of
21 equipment including press brakes.

22 We have authored publications about
23 safeguarding. So I am one of the cited authors in
24 their publication on power press safeguarding and

1 one of their authors on general safeguarding of
2 equipment. That's what they do. That's kind of
3 their structure. I think through them I was
4 actually on a B-11 committee, two different
5 committees having to do with machine tools
6 including equipment like the press brake.

7 Q. Am I correct it is not a governmental
8 entity?

9 A. No, it is not.

10 Q. Am I correct it is not a governmental
11 organization?

12 A. It is not a branch of the government, no.
13 They may have contracts with the government to do
14 certain kinds of things but they are not a branch
15 of the federal government or state government.

16 Q. Have you ever read the Accident Prevention
17 Manual For Industrial Operations published by the
18 National Safety Council?

19 A. I have read bits and pieces of it.
20 I doubt I have read every word in it.

21 Q. Have you cited National Safety Councils in
22 your report?

23 A. Yes.

24 Q. Are you relying upon the articles that you

1 cited in order to formulate the opinions contained
2 in your report?

3 MR. ROBINSON: Object to the form. Excuse me.

4 THE WITNESS: I am using them as examples.

5 I could have cited one. I could have cited a
6 half-dozen in support of those opinions. But it
7 seemed to me it would be fruitless to try to make
8 the most exhaustive list of articles. I picked
9 articles that I thought were representative of a
10 broad theory concerning this equipment.

11 So, for example, for ANSI standards
12 I looked at three different years.

13 For data sheets on press brakes I looked at
14 multiple years. I also looked at mechanical power
15 presses, which is not the product here but it is a
16 brother or sister kind of product.

17 And I looked at National Safety Council, their
18 accident prevention manuals and their other data
19 sheets and other publications. And I cited some of
20 those in here. I don't think they are -- I am not
21 aware of anything that is inconsistent with their
22 broader publication.

23 BY MR. HARTMAN:

24 Q. What does a chairman's responsibility --

1 what are the responsibilities of a chairman of the
2 power press, forging and metal fabricating section
3 of the National Safety Council?

4 A. You know, it is probably written down
5 somewhere; and I don't have it memorized. But
6 generally the responsibility is to through that
7 committee to help facilitate the committee's
8 promotion of safety, whether that be in the form of
9 seminars, data sheets, answering questions,
10 providing guidance to people who have problems,
11 promoting safety through posters, through other
12 kinds of presentations, to making sure that the
13 membership has a broad representation on the
14 committee, to go to different manufacturing
15 facilities and see how other people are doing
16 things.

17 So whether I was chairman, vice-chairman
18 or just on the committee, we would go to the John
19 Deere plant and see how they would do things
20 including the use of press brakes and mechanical
21 power presses.

22 We went to Ford plants to do those kinds
23 of things.

24 We went to -- the committee went to NASA

1 or Boeing, rather, to look at airplane production
2 again using parts that are made on press brakes and
3 power presses and those kinds of things.

4 That's generally what they do. I think
5 there was some added responsibility for collecting
6 money and making annual reports and getting certain
7 paperwork in on time but those were kind of
8 procedural things.

9 BY MR. HARTMAN:

10 Q. Your report on page 2 indicates that you
11 were a contributor and reviewer of the National
12 Safety Council's publications, Safeguarding
13 Illustrated and The Power Press Safety Manual.

14 Did I accurately read that?

15 A. That's correct, yes.

16 Q. As a contributor and reviewer, did you
17 edit those publications to see to it that they were
18 accurate?

19 A. Most of the time the editor doesn't do
20 that. So you just asked me did you use a paint
21 brush to sand something.

22 The editor typically is someone who is
23 employed by the National Safety Council to make
24 sure the grammar is right because engineers are

1 poor at grammar and spelling, make sure that we
2 have parallel structures, make sure that when we
3 use Roman numerals, we don't switch to Arabic
4 numerals.

5 What my role and a handful of other
6 people's roles were was to read it to make sure it
7 is correct, to try to update it if there was
8 something new and interesting and to make sure that
9 there was a certain consistency throughout that
10 document and other documents related to these
11 issues.

12 Q. When you say read it to make sure it was
13 correct, read it to make sure it was grammatically
14 correct or substantively correct?

15 A. Technically correct.

16 Q. Explain to me what technically correct
17 means.

18 A. In other words if something said it is
19 supposed to be four inches and it was supposed to
20 be 40 inches, the hope was that we would catch that
21 mistake. If it said something was supposed to be
22 red and it was supposed to be r-e-d and it was
23 spelled r-e-a-d, it is both an editing kind of
24 thing as far as words but it is also a technical

1 thing as far as the -- it is supposed to be a
2 color, not an activity.

3 So we were looking for that. We were
4 looking for better art work, more clearer verbiage
5 every now and then. Sometimes we would have added
6 a phrase or a comma some place or added a sentence
7 or a better explanation of something, those kinds
8 of things.

9 Q. As a contributor, what portions of those
10 publications did you contribute?

11 A. I would have to go back and look
12 specifically. My recollection was in the Power
13 Press and Safety Manual I reviewed everything that
14 was there, offered suggestions and changes and
15 clarifications. And then I think I actually
16 authored a whole section having to do with kind of
17 industrial hygiene considerations in that kind of
18 equipment.

19 And in the other publication --

20 Q. Which would be Safeguarding Illustrated?

21 A. Yeah, I remember commenting on several of
22 the diagrams, asking for clarification, putting
23 arrows in or using better words that were more
24 descriptive and more current words, more consistent

1 terminology, those kinds of things.

2 Q. Did you contribute any of the text to the
3 Safeguarding Illustrated?

4 A. I probably offered and may have included
5 phrases and sentences but I doubt if I offered --
6 I know I didn't offer a page of text. But there
7 may have been a sentence or two here or there, a
8 few words here or there, a phrase here or there,
9 maybe, you know, the addition of arrows pointing so
10 it was clearer what things were being talked about,
11 probably asked for certain artwork to be modified,
12 updated, changed, removed, enlarged, those kinds of
13 things.

14 Q. You indicate that your work on human
15 factors and machine safety was published in the
16 Stamping journal; am I correct?

17 A. Yes.

18 Q. Do you have a copy of that article with
19 you here today?

20 A. No, I don't, but it is on the Internet.

21 Q. How would I find it on the Internet?

22 A. If you want, I will send you a copy. Why
23 don't you send the attorney a request for that?
24 And I will send him a copy, and he will send it to

1 you.

2 Q. I am making that request now.

3 A. I won't remember it now, so pardon my poor
4 memory on things like that.

5 Q. Let's go to page 3.

6 A. Sure.

7 Q. Materials reviewed specifically for this
8 matter, does that section outline the materials
9 that you reviewed for this matter?

10 A. Specifically is spelled wrong, isn't it?

11 Pardon me? Are these --

12 Q. By the way, specifically is spelled
13 incorrect. We won't hold that against you though.

14 A. Your question was --

15 Q. Are those -- under the materials reviewed
16 specifically for this matter, are those the
17 materials that you reviewed in anticipation for
18 preparing your report?

19 A. I think so, yes.

20 Q. Were there any other materials that you
21 intend on relying upon in order to formulate the
22 opinions in this matter?

23 A. Well, there were a bunch of materials
24 I sent to Mr. Robinson that he sent on to you,

1 I believe. And then based on the new positions of
2 Ralph Barnett from his deposition, I made copies of
3 these other materials, some of which we have talked
4 about here. I am not sure if we talked about all
5 of them.

6 Q. What other materials -- okay.

7 So am I correct that any additional
8 materials that are not cited in materials reviewed
9 specifically for this matter would be materials
10 contained in those you forwarded to Mr. Robinson to
11 be forwarded to me?

12 A. Yes.

13 Q. Or new materials --

14 A. Or they are cited in the text here. There
15 are a lot of web pages or things off the Internet
16 or other documents. In other words, in this list
17 of materials reviewed I don't think I ever
18 mentioned any of the safety briefs. But I talk
19 about them a lot, and I reference them in the
20 report.

21 There are those books we talked about on
22 page 14. I don't think they are detailed here
23 because they are detailed in the report.

24 Q. Okay. So the materials you are going to

1 rely upon in order to formulate your opinions would
2 be materials specifically reviewed for this matter,
3 those materials, materials that you sent to
4 Mr. Robinson for him to forward to me?

5 A. Uh-huh.

6 Q. Materials specifically cited in the body
7 of the article and those that you prepared in
8 response to Professor Barnett's deposition?

9 A. That's correct.

10 Q. Okay. Would you please identify for me
11 any additional documents that have not been
12 identified that you have obtained in response
13 Professor Barnett's deposition?

14 A. That I specifically obtained in response
15 Professor Barnett's deposition, that was your --

16 Q. Right.

17 THE WITNESS: Why don't we take like a
18 three-minute break? Let me go through here and see
19 what they are. Otherwise I am just going to be on
20 tape fumbling around looking for those kinds of
21 things.

22 MR. HARTMAN: No objection.

23 THE VIDEOGRAPHER: Off the record at 10:24 am.

24 (A short break was taken.)

1 THE VIDEOGRAPHER: Back on the record at
2 10:28 a.m.

3 THE WITNESS: I think you asked me what other
4 things -- my recollection is what other things are
5 not on this list, are not in the report or haven't
6 been turned over that I absolutely certainly have
7 some knowledge of.

8 The only things I can think of that are not
9 there were I have two DVDs. One I believe is Ralph
10 Barnett's testing and I think the other one is a
11 video inspection without sound; then an article
12 entitled Press Brakes and You -- Whose Business is
13 Safety? Everybody's: a --

14 MR. HARTMAN: Let's mark that, please.

15 Would that be No. 8?

16 THE COURT REPORTER: That would be 8.

17 (Whereupon, HUTTER Deposition
18 Exhibit No. 8 was marked for
19 identification.)

20 THE WITNESS: A Internet downlisting
21 specifically for a Cincinnati company on a press
22 brake again showing the cycle time for their press
23 brakes.

24 The other document just had a whole bunch of

1 different press brakes, and I thought I would look
2 in a little more detail about one manufacturer.
3 And again they have cycle times of, oh, like 1.4
4 and 2 seconds as examples.

5 Do you want to mark that also?

6 MR. HARTMAN: Yes, please.

7 (Whereupon, HUTTER Deposition
8 Exhibit No. 9 was marked for
9 identification.)

10 THE WITNESS: Then I think this document was
11 part of what was documents from my file that were
12 copied that I believe I sent to you. But just to
13 make sure I have a B-11 committee document from
14 September of '89 asking questions about
15 interpretations of some of the standards and in
16 particular on the last page there is a statement
17 that says, since the employer is the one who
18 determines the tooling method of feeding operation
19 and safeguarding, only the employer is able to
20 determine if the provisions of this clause are
21 required.

22 This clause has to do with safeguarding. So
23 I think it was part of that material that was sent
24 over but just to be on the safe side.

1 MR. HARTMAN: We will mark that as well,
2 please.

3 THE WITNESS: Sure.

4 (Whereupon, HUTTER Deposition
5 Exhibit No. 10 was marked for
6 identification.)

7 MR. HARTMAN: That would be No. 9; am
8 I correct?

9 THE COURT REPORTER: Ten.

10 THE WITNESS: And then I think in the documents
11 here I mentioned I did an inspection and I talk
12 about photographs but -- and I know I sent to
13 Paul's office the photographs and the video but
14 I don't know for certain if those have been given
15 to you or not but I have a copy of the photographs
16 and of the videotape.

17 BY MR. HARTMAN:

18 Q. I believe I have a videotape and I don't
19 recall seeing photographs. That doesn't mean that
20 they weren't forwarded to me. I am not implying
21 that at all.

22 MR. ROBINSON: I think they were and they
23 should have been.

24 MR. HARTMAN: Let me look at those photographs.

1 MR. ROBINSON: In fact Professor Barnett
2 referenced them in his testimony, so I know they
3 would have come through you.

4 MR. HARTMAN: I am just being doubly sure just
5 checking through.

6 Paul, some of the photos look familiar. Some
7 of them are not -- and again I am not implying --
8 there has been so much exchanged in this. I would
9 ask that you please provide me with just a
10 photocopy of these at your earliest convenience.

11 Thank you, sir.

12 MR. ROBINSON: Why don't you check to see if
13 you have them first? We wouldn't give you
14 piecemeal photographs, and we have confirmed that
15 you have them because Professor Barnett commented
16 on them and how there were photographs of other
17 machines located at the facility where the press
18 brake was located at the time of Dr. Hutter's
19 inspection.

20 So rather than just asking us to do something
21 that appears to be unnecessary, why don't you
22 confirm whether or not you have them or not?

23 MR. HARTMAN: I believe Professor Barnett
24 referenced the videotape, and the videotape has an

1 inspection of other machines. But I will check
2 anyway.

3 MR. ROBINSON: If you would. I would be glad
4 to fire off another copy for you.

5 BY MR. HARTMAN:

6 Q. Sir, it is my understanding that -- I am
7 sorry.

8 Are there any more articles or documents
9 that you have relied upon in formulating your
10 opinions in the report that have not been
11 identified?

12 A. I don't think so.

13 Q. So the information -- the documents that
14 you have produced today that we have marked as
15 exhibits, the articles referenced in the body of
16 your argument, excuse me, your report, those other
17 materials specifically we reviewed for this matter,
18 would that be the extent -- and those cited in that
19 paragraph as far as textual documents?

20 A. And those obviously we have just labeled
21 now.

22 Q. Yes.

23 A. I guess, you know, I have got years of
24 going to school and looking at documents that there

1 is sometimes things that I am aware of that I don't
2 think anyone would need a document for. And
3 I don't know that there is something I am intending
4 to rely on but I guess there could be.

5 I didn't intend to hold anything back.
6 And I believe these are all of the documents
7 that I would normally be using. But if someone
8 asked a question, oh, what's the basis of OSHA, you
9 know, I happen to know it came out of a certain
10 piece of legislation. I didn't provide that
11 document here.

12 Q. So other than those things which are
13 apparently very clear to you, you have identified
14 the documents that you have relied upon in
15 formulating your opinions in this matter?

16 A. Yes.

17 Q. In your videotape at the very end of the
18 tape there is a very brief snippet of tape that
19 shows you looking at the electrical system of the
20 press brake, the Heim press brake; do you recall
21 that?

22 A. I remember something but I don't remember
23 the details of it. I think it was opening up the
24 cabinet looking at some wiring, yes.

1 Q. Is there anything that -- strike that.

2 Is there anything that you saw in your
3 examination of the electrical system of this press
4 brake that caused or contributed to the accident
5 Ms. Lindquist was involved in?

6 MR. ROBINSON: Object to the form of the
7 question.

8 THE WITNESS: I haven't made that
9 determination.

10 BY MR. HARTMAN:

11 Q. Have you -- are you investigating that?

12 A. Not currently, no.

13 Q. Do you intend to investigate that?

14 A. I have no intention but I guess someone
15 could ask me to look into it.

16 Q. Let's go to page 7 of your report, please.

17 A. Sure.

18 Q. By the way, prior to appearing today did
19 you happen to review your report in preparation of
20 today's testimony?

21 A. I think the last time I reviewed the
22 report in any detail was for the last scheduled
23 deposition I was supposed to have last week was
24 canceled or postponed.

1 Q. I know nothing about a deposition
2 canceled.

3 MR. ROBINSON: Pardon me?

4 THE WITNESS: Last week I was scheduled, I was
5 supposed to be deposed --

6 MR. ROBINSON: It was scheduled to be taken in
7 the afternoon.

8 MR. HARTMAN: We had that very discussion --
9 you are talking about Friday if we got done with
10 Switalski --

11 MR. ROBINSON: Sure, that's what we planned on,
12 him starting it --

13 THE WITNESS: I was prepared to go that day and
14 right before that was probably the last time
15 I looked at it in some great detail.

16 BY MR. HARTMAN:

17 Q. Have you had the chance to review your
18 report?

19 A. Yes.

20 Q. Is there anything contained in your report
21 that you would like to change before we go any
22 further?

23 A. I would like to change the spelling of
24 specifically. But as I sit here I can't think of

1 anything that I would think that's material to my
2 opinions that I would like to change.

3 Q. Is there anything that when you read it
4 the last time, you felt was inaccurate even if it
5 wasn't material?

6 A. I can't think of anything.

7 Q. In the second paragraph you indicate,
8 referring to press brakes, that it is usually
9 considered a multi-purpose machine typically able
10 to produce long V-type bends through the use of
11 owner-supplied dyes; am I correct?

12 A. Yes.

13 Q. Is that a distinguishing characteristic of
14 a press brake?

15 MR. ROBINSON: Object to the form of the
16 question.

17 THE WITNESS: Only in that they tend to have
18 longer, narrower beds than mechanical presses but
19 you could put a long, narrow bed on a mechanical
20 press.

21 BY MR. HARTMAN:

22 Q. You indicate that the machine does not
23 have a pinch plate that caused the plaintiff's
24 injuries when it left the control time; am

1 I correct?

2 A. Yes.

3 Q. Am I correct, sir, that the only way a
4 press brake can become operational is if it does in
5 fact ultimately have a pinch plate?

6 MR. ROBINSON: Object to the form of the
7 question.

8 THE WITNESS: I would say that the vast
9 majority, the preponderance, 90 percent plus of the
10 operations, there is probably a pinch point.
11 Almost in all circumstances there is supposed to be
12 some kind of safeguarding applied to that. But
13 I would say, yes, it is probably fair to say that
14 more likely than not you are going to have a pinch
15 point somewhere with the press brake.

16 BY MR. HARTMAN:

17 Q. So press brakes when they are manufactured
18 are intended to have introduced to them a means by
19 which there is a pinch plate?

20 MR. ROBINSON: I will object to the form of the
21 question.

22 THE WITNESS: Typically if there are dyes,
23 those dyes have pinch points. There are some dyes
24 where they are a unitized dye. And you put the